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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FIVE

In re B.F., a Person Coming Under the
Juvenile Court Law.

B211414
(Los Angeles County Super. Ct.
No. CK73644)

LOS ANGELES COUNTY
DEPARTMENT OF CHILDREN AND
FAMILY SERVICES,

Plaintiff and Respondent,

v.

V.F.,

Defendant and Appellant.

APPEAL from a judgment and orders of the Superior Court of Los Angeles County, Sherri Soble, Juvenile Court Referee. Affirmed.

Neale B. Gold, under appointment by the Court of Appeal, for Defendant and Appellant.

Raymond G. Fortner, Jr., County Counsel, James M. Owens, Assistant County Counsel, and David Nakhjavani, Senior Associate County Counsel, for Plaintiff and Respondent.

V.F. (“mother”) appeals from the judgment of August 27, 2008, declaring her children, B.F., M.L., and J.L.¹ (collectively the “children”), dependents of the court under Welfare and Institutions Code section 300² and orders of August 28, 2008, terminating jurisdiction with a family law order granting the L. father sole physical custody of the L. children. Mother contends substantial evidence does not support the jurisdictional finding. She further contends the orders granting sole physical custody of the L. children to the L. father, with visitation as arranged by the parents, and prohibiting contact between the children and their 17-year-old gang-involved sibling (mother’s older son) were an abuse of discretion. We hold substantial evidence supports the finding of jurisdiction, and the custody and visitation orders were not an abuse of discretion. As she is not aggrieved by the no-contact order, mother lacks standing to appeal it. Accordingly, we affirm the judgment and orders.

STATEMENT OF FACTS AND PROCEDURE

B. was born in 1994 to mother and O.F., who physically abused mother and B. for many years before mother separated from him. The L. children were born in 2005 and 2007, respectively, to mother and the L. father,³ who lived together. Also living in the home were B. and mother’s older son.⁴ Mother was aware of the older son’s involvement with a gang, drugs, and criminal activity. The older son and his fellow gang members congregated in the home, and their drugs were accessible to the children. The

¹ Hereinafter, M. and J. will be referred to, collectively, as “the L. children,” and their father will be referred to as “the L. father.”

² All further statutory references are to the Welfare and Institutions Code, unless otherwise indicated.

³ The L. father is the presumed father of the L. children.

⁴ B. and mother’s older son have the same father.

L. father moved out in mid-October 2007 because of disputes caused by mother's refusal to safeguard the family from contact with the older son and his gang associates. The L. father made a child endangerment referral to the Department of Children and Family Services.

On October 27, 2007, the home was searched in a narcotics investigation. The older son, who was on probation for tagging, was arrested. He was placed on probation at Camp Holton with a release date of August 20, 2008. The family was given voluntary maintenance services and supervised by the Department. Mother was required to keep her home free from illegal activity and drugs.

After separating, mother and the L. father shared physical custody of the L. children on a 50/50 basis. Mother lived in a five-bedroom home. She rented one room in her home to Edgar F. and his family. Mother did not know Edgar and did not check into his criminal background before renting out the room to him. Edgar was a member of a local gang called Down As Fuck (DAF). The gang was attempting to reestablish itself in the area. It was involved in two drive-by shootings; two of its members were charged with murder. Edgar, his live-in companion, and others smoked methamphetamines in the garage of the home, which was accessible to all members of the family, and Edgar possessed drugs with intent to sell.

On July 10, 2008, police officers executed a search warrant at mother's address during a multi-location search of the residences for DAF members and associates. Edgar was suspected of assault with a deadly weapon. Paraphernalia used for smoking drugs and packaging drugs for sale, baggies containing methamphetamines and marijuana (114 grams), two pellet guns disguised to look like hand guns, and a notebook containing DAF gang writing were found in the garage. Drugs were also found in Edgar's room. The drugs, drug paraphernalia, and weapons were accessible to the children. The police also found a .45-caliber bullet in the master bedroom. In the living room, they found a book with pages cut out so that a gun could be hidden inside. The trash bins contained an unusually large number of beer and alcohol bottles in trash bins. The police considered

B. to be associated with DAF, but did not arrest him.⁵ B. was a very poor student and had been suspended from school for four days in late 2007.

Mother denied knowledge of any drug use, drug sales, or criminal activity in the home by the older son, Edgar, or anyone else. She asserted that the drugs in her home were not accessible to the children “because they were not visible.” She testified she did not remember the name of her older son’s gang. “I haven’t done anything wrong. . . . I had no idea that this was going on [in] my home[,]” she stated. She asserted Edgar had been living in her home only since early June 2008. She admitted to a history of domestic violence abuse.

The children were detained. The L. father requested that they be released to his custody until mother was able to resume custody. Reunification services were ordered for mother on July 15, 2008. Edgar and his family moved out.

On July 21, 2008, the L. children were ordered released to the L. father and B. was ordered detained with the maternal grandmother. Mother was granted unmonitored day visits. Mother stated she signed up for a program of parenting.

On August 27, 2008, the children were declared dependents of the court, based on sustained allegations under section 300, subdivision (b): mother “created a detrimental and endangering home environment for the children [in that] drug pipes, methamphetamine, and marijuana were found in the children’s home within access of the children [on July 10, 2008,]” and “mother allowed [the older son] to engage in drug and gang-related criminal activity in the children’s home in the children’s presence[;]” and the L. father “knew that [mother’s older son] engaged in drug and gang-related criminal activities in the children’s home and failed to take action to protect the children.” The dependency court observed: “You [mother] rented a room to drug dealers. There are [video]tapes of them using in your garage. If you didn’t know, you should have. The information that you have provided to this court regularly and consistently has been

⁵ B. denied any association with a gang.

words like ‘I guess.’ ‘I’m not sure.’ ‘I believe he had a dirty test.’ . . . This is your child. Your child who’s using drugs. Selling drugs in your home. You rented a room to people who were using drugs, selling drugs in your home. You have a 14-year-old, a 3-year-old, and an 8-month-old in the home. [¶] . . . If rival drug dealers came in, you would not be sitting in front of me. Your son would not be sitting in front of me. Your babies would not be in front of me. [¶] You need to know who you rent a room to and what’s going on in your house when you have babies there. [¶] And, when you have a 14-year-old who’s trying to get an education and stay away from gangs -- you let your son who you know was having problems, you knew was a gang member, you knew was involved with drugs, in your home and living there, contaminating everything; plus strangers in your home with your babies.”

B. was released to home-of-parent-mother under Department supervision on condition mother resided in the maternal grandmother’s home. B.’s case was continued for a judicial review in six months. The dependency court ordered custody of the L children taken from mother. The L. children were placed in the home of the L. father, and mother was awarded unmonitored visits that did not include overnights. The children were ordered to have no contact with mother’s older son. Mother was ordered to participate in a parenting program. The dependency court intended to terminate dependency jurisdiction over the L. children upon receipt of a family law order for signing.

On August 28, 2008, the dependency court signed a family law custody order giving mother and the L. father joint legal custody and the L. father sole physical custody of the L. children, granting mother visitation “as arranged by the parents,” and prohibiting contact between the L. children and mother’s older son. The dependency court terminated jurisdiction over the L. children.

DISCUSSION

Substantial Evidence Supports the Findings Under Section 300, Subdivision (b)

Mother contends substantial evidence does not support the finding the children were at risk of harm under section 300, subdivision (b). We disagree with the contention.

“In reviewing the jurisdictional findings and the disposition, we look to see if substantial evidence, contradicted or uncontradicted, supports them. [Citation.] In making this determination, we draw all reasonable inferences from the evidence to support the findings and orders of the dependency court; we review the record in the light most favorable to the court’s determinations; and we note that issues of fact and credibility are the province of the trial court. [Citation.]” (*In re Heather A.* (1996) 52 Cal.App.4th 183, 193.) “We do not reweigh the evidence or exercise independent judgment, but merely determine if there are sufficient facts to support the findings of the trial court.” (*In re Matthew S.* (1988) 201 Cal.App.3d 315, 321.)

Section 300, subdivision (b) describes a child who “has suffered, or there is a substantial risk that the child will suffer, serious physical harm or illness, as a result of the failure or inability of his or her parent or guardian to adequately supervise or protect the child.” “[T]he question under section 300 is whether circumstances *at the time of the hearing* subject the minor to the defined risk of harm.” (*In re Rocco M.* (1991) 1 Cal.App.4th 814, 824.) “[P]ast conduct may be probative of current conditions’ if there is reason to believe that the conduct will continue. [Citation.]” (*In re S.O.* (2002) 103 Cal.App.4th 453, 461.)

The record contains substantial evidence of the sustained allegations that mother created an endangering and detrimental environment for the children that placed them at risk of harm. Mother testified she knew the older son was a gang member, used illegal drugs, brought his gang associates over to the house, and engaged in illegal gang activity. With this knowledge, she exposed the children to him, his drugs, and his criminal

associates by allowing him to live in the home and gather there with his friends. When the L. father insisted the older son be barred from the home, mother refused. Thus, mother chose the older son, who endangered the family, over the L. father, who tried to protect the family. The home was searched by the police twice in two years. Despite police interest and the Department's requirement she maintain her home free of drugs and illegal activity, mother allowed a stranger, who was a drug-dealing member of a violent criminal street gang, to live in the home. Edgar used her home for smoking and packaging drugs for sale and hiding guns. The police suspected him of committing assault with a deadly weapon. His drugs, drug paraphernalia, and weapons were accessible to the children. Mother insisted she played no role in exposing the children to danger. She denied knowledge her older son or Edgar engaged in dangerous or illegal activities in the home. She insisted she did nothing wrong. She did not complete a parenting program. There was no evidence she was making progress in the parenting program she stated she enrolled in the month before the hearing. It is reasonable to infer from her denials of her role in endangering the children that she made no progress in parenting counseling and remained as unsafe a parent as she was when the children were detained. The foregoing is overwhelming evidence of a current risk of harm.

To the extent mother argues the threat to the children's safety evaporated when Edgar moved out and mother made a plan for her older son to live with his father when released from custody, we conclude that mother's long history of exposing her children to abuse and risk of harm from drugs, gangs, criminal activity, denial of responsibility, choice of her older son over the L. father, and failure to complete a parenting program is substantial evidence she is an unsafe, unrehabilitated parent who is likely to expose the children again.

Mother argues there is evidence, such as the number of hours she cares for the children per week, which shows she does not present a current risk. This is but a request that we reweigh the evidence, which we will not do. (*In re Matthew S.*, *supra*, 201 Cal.App.3d at p. 321 ["We do not reweigh the evidence or exercise independent

judgment, but merely determine if there are sufficient facts to support the findings of the trial court”].)

Orders of Custody, Visitation, and Prohibiting Contact with Mother’s Older Son Were Not an Abuse of Discretion

A. Custody Order

Mother contends it was an abuse of discretion to issue an exit order⁶ granting the L. father sole physical custody of the L. children instead of granting joint physical custody to both parents. There was no abuse of discretion.

We review a dependency court’s custody decision for abuse of discretion. (*In re Stephanie M.* (1994) 7 Cal.4th 295, 318.) “When a court has made a custody determination in a dependency proceeding, “a reviewing court will not disturb that decision unless the trial court has exceeded the limits of legal discretion by making an arbitrary, capricious, or patently absurd determination [citations].” [Citations.] . . . ‘The appropriate test for abuse of discretion is whether the trial court exceeded the bounds of reason. When two or more inferences can reasonably be deduced from the facts, the reviewing court has no authority to substitute its decision for that of the trial court.’” [Citations.]” (*Id.* at pp. 318-319.)

Exit orders are governed by section 362.4. When the dependency court terminates its jurisdiction over a child, it may make custody and visitation orders, which shall be filed in any action involving custody of the child that is pending. If none is pending, the orders may be used as the basis for opening a family law file. The orders shall continue until modified or terminated by a subsequent order of the superior court. (§ 362.4.) The authority to make custody orders when jurisdiction is terminated includes the power to

⁶ Custody and visitation orders issued in connection with the termination of dependency jurisdiction are commonly referred to as “exit orders.” (*In re John W.* (1996) 41 Cal.App.4th 961, 970.)

order that one parent have sole legal and physical custody of the child based on the child's best interests. (See *In re John W.* (1996) 41 Cal.App.4th 961, 971-972.) "When making a custody determination in any dependency case, the court's focus and primary consideration must always be the best interests of the child." (*In re Nicholas H.* (2003) 112 Cal. App. 4th 251, 268.)

The dependency court could reasonably find that mother was not ready to reunify with the L. children by resuming joint physical custody. Joint custody would give mother the power to decide who and what to expose the children to in her home. When she had physical custody, she repeatedly exposed them to the dangers of drugs and gangs. She never acknowledged the risks she exposed them to or her role, and she did not complete a program of rehabilitation. The foregoing evidence indicates it would not be safe for her to resume having joint physical custody. For his part, the L. father took steps to protect his children from exposure to mother's older son and the older son's gang associates. He had been parenting his children their whole lives, including having them live with him in his separate home fifty percent of the time. In these circumstances, the determination the children's best interests required that mother not have joint physical custody was not an abuse of discretion.

B. Order Governing Mother's Visitation With the L. Children

Mother contends that the order providing visitation with the L. children will be "as arranged by the parents" instead of a visitation order granting overnight visits is an abuse of discretion. We conclude the order was well within the dependency court's broad discretion. (See *In re Chantal S.* (1996) 13 Cal.4th 196, 213-214 [visitation order upon termination of jurisdiction is within the discretion of the court].)

Mother acknowledged she and the L. father have an amicable relationship and can work out arrangements regarding their children. The dependency court explained monitored visits were not required, but found mother was not ready for overnight visits. "The parents can agree to [overnight visits] after the L. father thinks that the mom is

doing what she needs to do.” The determination that dependency court jurisdiction was presently unnecessary for the L. children’s protection was in turn premised on the existence of this specific custody and visitation order. (See *In re Chantal S.*, *supra*, 13 Cal.4th at p. 204.) As the L. children are very young and vulnerable, mother has a history of exposing them to an endangering home environment, and mother was not rehabilitated, the determination that the safety of the children upon termination of jurisdiction required visitation be as arranged by the parents is well within the bounds of reason and, thus, not an abuse of discretion.

C. No-Contact Order

Mother contends the order prohibiting the children from having contact with the older son is an abuse of discretion. The Department responds that mother lacks standing to raise the issue, as she is not aggrieved by the order. (See Code Civ. Proc., § 902; *In re D.S.* (2007) 156 Cal.App.4th 671, 674 [to have standing, the parent must show how the ruling affects his interests]; *In re Nachelle S.* (1996) 41 Cal.App.4th 1557, 1560 [mother “has no standing to raise the minor’s right to a court order concerning visitation with her siblings”].) Mother replies her interests were adversely affected, citing *In re L.Y.L.* (2002) 101 Cal.App.4th 942, 948, which held that a “parent has standing to assert the [section 300,] subdivision (c)(1)(E) [sibling] exception to termination of parental rights⁷] because the parent under general standing requirements is a party directly aggrieved by a decision on the issue.” *In re L.Y.L.* is inapposite. A ruling that the sibling exception does not apply results in termination of the parent’s parental rights, if no other exception applies. (*In re L.Y.L.*, *supra*, 101 Cal.App.4th at p. 948.) Mother’s parental rights are not

⁷ Under this exception, which has been renumbered section 300, subdivision (c)(1)(B)(v), parental rights shall not be terminated if “there will be a substantial interference with a child’s sibling relationship.”

injured by a ruling that siblings cannot visit one another. We therefore conclude mother has no standing to appeal the no-contact order.

Were we to decide the issue, we would conclude the order was a proper exercise of discretion. The dependency court stated: “I’m making an absolute no-contact order regarding [the older son]. . . . The 3-year-old and the 8-month- old and this 14-year-old, who’s very suggestible at this point—no one is going to be around [the older son] until he decides how his life is going to change.” “[The older son] is going to bring guns and drugs into the home of his siblings. If mother means to fix what’s happening in her life, that’s the first stop; is to turn around and say to him, you’re not welcome here until your life changes. . . . I am not putting these other children in jeopardy by allowing it.” The older son’s gang membership, criminal activities, and drug use support the dependency court’s determination that contact between the children and him would be detrimental to the children. There was no abuse of discretion.

DISPOSITION

The judgment is affirmed.

KRIEGLER, J.

We concur:

ARMSTRONG, Acting P. J.

MOSK, J.